

OFFICE OF
GENERAL COUNSEL

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July 13, 2018

Ms. Lisa J. Stevenson, Esquire
Acting General Counsel
Office of General Counsel
Federal Election Commission
1050 First Street, NE
Washington, DC 20463

MUR # 7428

Re: FECA Violations by Matlock for Congress, Mark Hackney, Treasurer, The Bingham Group, Lisa Bingham, as President of The Bingham Group, Matlock Tire Service, Inc., Jimmy Matlock, individually, and Mark Hackney, individually

Dear Ms. Stevenson:

Pursuant to 52 U.S.C. § 30118, I write to file a complaint against Matlock for Congress, The Bingham Group, Lisa Bingham, as President of The Bingham Group, Matlock Tire Service, Inc., a Tennessee corporation, d/b/a Matlock Tire Service & Auto Repair ("Matlock Tire"), Mark Hackney, Treasurer; Jimmy Matlock, individually; and Mark Hackney, individually (collectively the "Respondents") for violation of the Federal Election Campaign Act ("the Act" or "FECA"), 52 U.S.C. § 30118, and the regulations of the Federal Election Commission ("the Commission" or "FEC").

Specifically, Matlock Tire Service, Inc. has funded a television advertisement campaign in Tennessee's Second Congressional District for the sole purpose of promoting congressional candidate, Jimmy Matlock. The facts outlined in this complaint show a clear pattern of collusion between Matlock for Congress, Jimmy Matlock, Matlock Tire Service, Inc., and The Bingham Group to disseminate advertisements featuring Jimmy Matlock, the federal candidate, paid for by corporate funds. Given the clear change in content by Matlock Tire following Jimmy Matlock's entrance into the congressional race, this activity evidences a calculated effort to evade the prohibition on corporate contributions to federal campaigns, and has resulted in illegal corporate contributions and illegal coordinated communications.

Facts of the Violations

Jimmy Matlock is a Republican candidate for United States Congress for the Tennessee Second Congressional District. The Matlock campaign filed Jimmy Matlock's Statement of Candidacy and the Statement of Organization for the campaign committee, Matlock for Congress, on August 3, 2017. The Tennessee primary will be held on August 2, 2018.

Jimmy Matlock is also the owner of Matlock Tire Service, Inc., a Tennessee corporation, d/b/a Matlock Tire Service & Auto Repair. Since the entrance of Jimmy Matlock into the congressional race, Matlock Tire Service, Inc. has hired The Bingham Group to create television advertisements ostensibly for the benefit of the corporation, but which are instead thinly concealed campaign advertisements, for the sole purpose of promoting Jimmy Matlock's congressional candidacy.

During the campaign, Matlock for Congress has focused on highlighting Jimmy Matlock's 47 year association with Matlock Tire Service, Inc. as one of his principal qualifications for serving in Congress. For example, an advertisement entitled by the campaign as "The Tire Guy" begins with a man exclaiming "Jimmy Matlock—he's the tire guy!" Matlock for Congress, The Tire Guy, (June 4, 2018) <https://www.youtube.com/watch?v=TK-CBoLAZ9w>. Later in the ad, in a Matlock Tire store, Matlock himself states "I've spent the last 47 years changing your family's tires." *Id.* Matlock for Congress' website further evidences his campaign's strategy of tying himself to the corporation through a series of pictures of the candidate at Matlock Tire. Jimmy Matlock for Congress, <https://www.matlockforcongress.com/>.

At the same time, Matlock Tire Service, Inc. has changed its advertisements to exclusively focus on Jimmy Matlock, rather than promoting any element of the business. For example, during the week of June 18th, Matlock Tire Service, Inc. ran an ad that exclusively promoted Jimmy Matlock. The advertisement, entitled "Matlock 2018 Family" starts with the words "MATLOCK Serious About Service" brazenly emblazoned on a red screen for several seconds, and then has Jimmy Matlock delivering the following self-promotional message:

Hi, I'm Jimmy Matlock of Matlock Tire Service and for over 65 years we have been serving east Tennessee and we just wanted to say thank you.

We have [inaudible] good service and they come back again and again.

Because our employees have been for many years I think of them as family because these people have been here before I was born.

We hope that is something unique to us small businesses that we are a third generation and can provide a family atmosphere that people don't get other places.

Matlock 2018 Family (TV Commercial broadcast June 18-25, 2018 as shown on Exhibit A attached hereto) (video recording on file with complainant).

This blatantly self-promotional advertisement, produced by the same vendor, The Bingham Group, which produces the Committee's political ad campaign, is in marked contrast to

¹ We note that Matlock for Congress' website errantly refers to the campaign committee as "Jimmy Matlock for Congress".

the advertisements that Matlock Tire ran prior to Jimmy Matlock's entry into the congressional race. *C.f.* Matlock Tire, Price Match Month, September 18, 2015, <https://www.youtube.com/watch?v=IRyYRGE3ld4>.

The similarity in language and themes in both the Matlock Tire and Matlock for Congress advertisements evidences the close coordination of their production. For example, the introductory language in both ads is nearly identical:

Matlock for Congress: "I'm Jimmy Matlock and I've spent the last 47 years changing your family's tires."

Matlock Tire: "Hi I'm Jimmy Matlock of Matlock Tire and for over 65 years we have been serving east Tennessee."

Even more incriminatory is the fact that Matlock for Congress and its campaign consultants did not buy any broadcast airtime during the period that the Matlock Tire advertisement was on the air. *See Exhibit B*. This was the sole period during the run-up to the primary that Matlock for Congress did not air ads on broadcast media, something that would appear to have been coordinated by its campaign consultants, who would have been involved in both Matlock Tire and Matlock for Congress' advertising purchases. *Id.* This ad buy was made on the same channels that Matlock for Congress was also targeting in its own ad buys—specifically Fox News, HGTV, and the History Channel. *Exhibit C; see also Exhibit A* (showing Matlock Tire purchases on those same stations).

Furthermore, the corporate funded TV ad features Jimmy Matlock, as well as images, language and themes substantially similar to those currently being utilized in materials promoting Jimmy Matlock's congressional campaign—which isn't surprising since all the same principals—specifically Jimmy Matlock and Lisa Bingham—are involved in crafting both ad campaigns. *See, e.g.,* Jimmy Matlock, Different, July 6, 2018, <https://www.youtube.com/watch?v=YDX0z80Le1U> (Emphasis on Jimmy Matlock's involvement in his tire business as his primary qualification for Congress, wearing the same clothes as worn in Matlock Tire ads)

Lisa Bingham and The Bingham Group's involvement in both ad campaigns, as a common vendor, is readily apparent through a review of The Bingham Group's Youtube page which features a series of Matlock Tire advertisements (<https://www.youtube.com/user/TheBinghamGroup>); and Matlock for Congress' FEC reports. For example, Matlock for Congress' April 2018 Quarterly, FEC report indicates a disbursement to The Bingham Group Inc. on March 28, 2018 in the amount of \$4,500 for a "Magazine Spread. Matlock for Congress, April 15 Quarterly Report (Second Amendment), Page 64, available at <http://docquery.fec.gov/pdf/171/201804199110348171/201804199110348171.pdf>.

Matlock for Congress' Year End 2017 filing is even more curious, as it shows an in-kind contribution from Lisa Bingham, personally, for "Video Production and event balloons". Matlock for Congress 2017 Year-End Report (First Amendment), Page 47, available at <http://docquery.fec.gov/pdf/522/201803199096590522/201803199096590522.pdf>. This possible

Act. *Id.* This case resulted in a civil penalty of \$21,000. Federal Election Commission, FEC Closes Seven Enforcement Cases, Collects \$21,000 in Civil Penalties, July 25, 2007, <https://www.fec.gov/updates/fec-closes-seven-enforcement-cases-collects-21000-in-civil-penalties/>. This closely tracks the present case where the Respondents violated the Act by coordinating communications to inject illegal corporate money into the race.

B. Matlock for Congress and Jimmy Matlock conspired to violate federal election law by accepting prohibited in-kind corporate contributions

Pursuant to 52 U.S.C. § 30118(a), federal political campaigns are prohibited from accepting contributions from corporations. In this instance, corporate spending for the production and placement of the corporate funded TV ad was known by both the campaign consultant, The Bingham Group, and by the candidate, Jimmy Matlock, all of whom were personally involved in producing the corporate funded TV ad. Matlock for Congress and Jimmy Matlock also conspired with Matlock Tire to coordinate when each would be running its ads. See Exhibit B. It is undisputed that Jimmy Matlock and Matlock for Congress knowingly accepted what, in this instance, constitutes an illegal, in-kind corporate contribution.

C. Respondents conspired to violate federal election law by making an illegal in-kind corporate contribution by producing and airing a corporate funded television advertisement that constituted a prohibited coordinated communication

The corporate funded television advertisement is an improper coordinated communication made by the corporation in support of a federal campaign. 11 CFR 109.21. FECA provides a three-part test to determine whether a communication is "coordinated":

- 1) Payment is made by a person other than the candidate's campaign committee;
- 2) Content standards are satisfied; and
- 3) Conduct standards are satisfied.

11 CFR 109.21(a)

Here, it is without question that the television advertisement was paid for by Matlock Tire, a corporate entity, so the payment prong is satisfied.

The content prong is satisfied on multiple grounds. First, the television advertisement is a public communication, which "refers to a clearly identified House . . . candidate [Jimmy Matlock] and is publicly distributed or otherwise publicly disseminated in the clearly identified candidate's jurisdiction 90 days or fewer before the clearly identified candidate's . . . primary . . . election. 11 CFR 109.21(c)(4)(i). Secondly, the Matlock Tire advertisement constitutes a redistribution of campaign material, through the use of the same images, language, themes and messages being used by Matlock for Congress, as coordinated by Jimmy Matlock and The Bingham Group. 11 CFR 109.21(c)(2).

Finally, the conduct prong is satisfied not just by Jimmy Matlock's material involvement with the production of the advertisement, but also by Lisa Bingham and The Bingham Group having been materially involved in the production of the television advertisement, engaged in substantial discussion about the advertisement, and having acted as a common vendor of both the corporate payee, Matlock Tire, and the campaign committee, Matlock for Congress. 11 CFR 109.21(d).

Here, the Respondents' egregious conduct satisfies the three requirements for an illegal coordinated communication. Matlock Tire paid for the advertisements in question. The TV ad campaign was within 90 days of the Tennessee primary. Jimmy Matlock was featured prominently in the advertisements, demonstrating that he was materially involved in decisions regarding their content. The Commission has previously held that a candidate's appearance in an advertisement for his or her business is sufficient to show that the candidate was materially involved in the decisions regarding that communication. *See, e.g.*, MUR 5517 (Stork); MUR 5410 (Oberweis). Finally, the Matlock Campaign and Matlock Tire share a common vendor in The Bingham Group.

As noted above, the FEC has previously cited and fined a candidate and his business for the exact same behavior as that of the Respondents. *See, e.g.*, MUR 5410 (Oberweis). The Commission should treat the Respondents equally severely for their violations of the Act.

D. Matlock Tire's recent advertisements do not fall within the Safe Harbor Exception.

While the Act does provide a safe harbor for certain types of business advertisements, it does not apply here. Matlock Tire's wanton violations of federal election law fall far outside the scope of that safe harbor.

Under 11 CFR 109.21(i), a public communication in which a Federal candidate is clearly identified *only* in his capacity as the owner of a business that existed prior to the candidacy is not a coordinated communication if: (1) the medium, timing, content, and geographic distribution of the public communication are consistent with public communications made prior to the candidacy; and (2) the public communication does not promote, support, attack, or oppose that candidate or another candidate who seeks the same office. 11 CFR 109.21(i).

Here, the content of the advertisements in question is not consistent with that of Matlock Tire's television advertisements made prior to Jimmy Matlock's candidacy. It was not until Jimmy Matlock declared his candidacy that Matlock Tire's advertisements began featuring him so prominently. Furthermore, these recent advertisements do not solicit business or place any emphasis on the commercial nature of Matlock Tire, as Matlock Tire's advertisements did in the past. These advertisements' only purpose is to promote Jimmy Matlock's congressional campaign using illegal corporate contributions. If such a striking aberration in content does not fall outside the safe harbor exception, it is difficult to imagine any communication from a business owner running for Federal Office that would. Granting safe harbor would allow the Matlock Campaign to brazenly circumvent campaign finance laws. Such an allowance of such a

willful violation would greatly diminish the power of the Act. The FEC should investigate and punish the Matlock Campaign to the fullest extent of the law.

Mark Hackney as Individual Respondent

It is warranted to join Mark Hackney individually, as well as in his capacity as Treasurer of the Committee, as he permitted the Committee to wantonly and willfully violate the Act by engaging in coordinated communications with The Bingham Group and Matlock Tire. Mr. Hackney was required to keep record of all contributions made to the Committee. 11 CFR 102.9. By allowing the coordinated communication to occur, and not at least reporting these illegal in-kind corporate contributions, Hackney recklessly failed to fulfill his duties as required by the Act.

Conclusion

Upon information and belief, and based upon the facts set forth hereinabove, the Respondents, Matlock for Congress, Mark Hackney, Treasurer, The Bingham Group, Lisa Bingham, as President of The Bingham Group, Matlock Tire Service, Inc., Jimmy Matlock, individually, and Mark Hackney, individually, have violated the Federal Election Campaign Act of 1971, as amended.

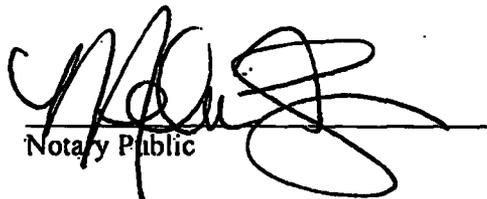
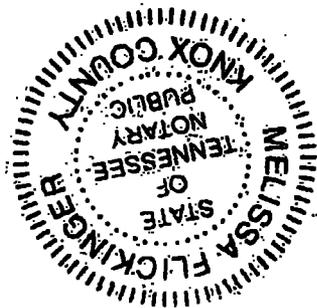
Please contact me if you have any further questions.

Respectfully submitted,



Andrew Davis, Campaign Manager
Burchett for Congress
5901 Kingston Pike
Knoxville, TN 37919

Before me this 17th day of July, 2018, appeared Andrew Davis, as Campaign Manager of Burchett for Congress, and under penalty of perjury did swear and affirm that the above and foregoing facts are true and correct to the best of his/her knowledge and belief.


Notary Public

10027444001

Exhibit B

SRCPmedia

TN - 2

		5/15	5/22	5/29	6/5	6/12	6/19	6/26	7/3	7/10	7/17	7/24	7/31	Grand Total
Media	Advertiser	GRP's Dollars												
Broadcast	Metlock													
Cable	Metlock													
Radio	Metlock													

All - Campaign Spending

Metlock [REDACTED] \$1,271

101-424-2401

Exhibit C

01-22-2018

Jimmy Matlock for Congress Cable Buy												
Advertiser	Agency	Market	Affiliate	System	System	Network/Package	Flight Start	Flight Stop	Cost \$	Spot Length	Spots	STC Office
Jimmy Matlock TNCD2	Flex Point Media Inc	Knoxville	Comcast	2132	Comcast/DISH- Le Knoxville, TN	FXNC	6/5/18	6/17/18	\$ 488.00	30	66	Washington
Jimmy Matlock TNCD2	Flex Point Media Inc	Knoxville	Comcast	6959	Comcast/Knoxville Interconnect, TN	FXNC	6/5/18	6/17/18	\$ 12,364.00	30	72	Washington
									\$ 12,852.00		138	
									TOTAL		138	
Advertiser	Agency	Market	Affiliate	System	System	Network/Package	Flight Start	Flight Stop	Cost \$	Spot Length	Spots	STC Office
*P Jimmy Matlock For Congress	*P Flex Point Media	Knoxville	Viacom Media, Inc.	1965	Viacom/TDS- Farragut-Halls, TN	DISC, FXNC, HGTV, HIST, USA	7/6/18	7/22/18	\$ 1,600	30	197	Viacom Media, Inc.
*P Jimmy Matlock For Congress	*P Flex Point Media	Knoxville	Viacom Media, Inc.	5033	Viacom/Knoxville, TN	DISC, FXNC, HGTV, HIST, USA	7/6/18	7/22/18	\$ 1,601	30	63	Viacom Media, Inc.
									\$ 3,201		260	
									TOTAL		260	
Advertiser	Agency	Market	Affiliate	System	System	Network/Package	Flight Start	Flight Stop	Cost \$	Spot Length	Spots	STC Office
Jimmy Matlock TNCD2	Flex Point Media Inc	Knoxville	Comcast	6959	Comcast/Knoxville Interconnect, TN	DISC, FXNC, HGTV, HIST, TWC	7/11/18	7/22/18	\$ 16,308	15	240	Washington
									\$ 16,308		240	
									TOTAL		240	
Advertiser	Agency	Market	Affiliate	System	System	Network/Package	Flight Start	Flight Stop	Cost \$	Spot Length	Spots	STC Office
Jimmy Matlock TNCD2	Flex Point Media Inc	Knoxville	Comcast	2132	Comcast/DISH- I+ Knoxville, TN	FXNC	7/23/18	8/1/18	\$ 315.00	30	45	Washington
Jimmy Matlock TNCD2	Flex Point Media Inc	Knoxville	Comcast	6959	Comcast/Knoxville Interconnect, TN	FXNC	7/23/18	8/2/18	\$ 15,807.00	30	51	Washington
									\$ 16,122.00		96	
									TOTAL		96	